

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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KASHEF, *et al.*,

Plaintiffs,

-against-

BNP PARIBAS S.A., *et al.*,

Defendants.

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JENNIFER E. WILLIS, United States Magistrate Judge:

On August 10, 2022, Plaintiffs filed a letter motion for sanctions for BNPP's refusal to comply with this Court's order dated July 13, 2022. Dkt. No. 90. This follows upon a prior letter motion filed by Plaintiffs on July 6, 2022, seeking to compel the deposition of two individuals. Dkt. No. 355. A hearing was held on July 12, 2022, to address that motion as well as several other outstanding discovery issues. On July 13, 2022, this Court issued an Order granting the letter motion to compel the depositions. Dkt. No. 382. Since then, one of the two depositions at issue has taken place; the other, that of Michel Konczaty, is at issue in this letter motion.

The Court does not find that sanctions, or a hearing on this issue, is appropriate at this time. While Defendants do appear to have taken their time with scheduling depositions and making witnesses available, their behavior does not currently rise to the level of sanctionable conduct. Though the testimony from the deposition of Jacques d'Estais—that Defendants did not reach out to him until after the Court compelled his deposition (Dkt. 390 at 2)—is concerning, the fact that Mr. d'Estais's deposition did occur demonstrates that Defendants have made efforts to

ORDER

16-CV-3228 (AKH) (JW)

make the witnesses available over the last few weeks, and supports their explanation that Mr. Konczaty is refusing to appear.


Certainly, monetary sanctions are inappropriate before alternative resolutions have been explored. Rule 37 provides several other actions the Court can take, including “directing that... designated facts be taken as established for purposes of the action” or “prohibiting the disobedient party from ... introducing designated matters into evidence.” Fed. R. Civ. P. 37(b)(2)(A). Defendants note this in their response letter, stating “any sanctions should be limited to ordering the parties to stipulate to information that would have been addressed by Mr. Konczaty.” Dkt. No. 393.

Thus, to the extent Court intervention is required at this time, the Court suggests the Parties meet and confer regarding the use of written interrogatories, perhaps in conjunction with certain stipulations, to engineer a solution that would approximate Plaintiffs’ goals in taking the deposition of Mr. Konczaty. Should the Parties be unable to come to a workable solution, they will be free to come back to the Court for next steps.

The letter motion at Dkt. No. 390 is DENIED. Defendants’ letter motion to seal at Dkt. No. 392 is GRANTED.

SO ORDERED.

DATED: New York, New York
August 22, 2022


JENNIFER E. WILLIS
United States Magistrate Judge